APPENDIX A

OPINION AND ORDER OF THE DISTRICT COURT:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION FILE NO. 16373

UNITED STATES OF AMERICA

V.

THE STATE OF GEORGA, ET AL.

BEFORE: BELL, Circuit Judge; O'KELLEY, District Judge; and FREEMAN, District Judge

PER CURIAM

ORDER

The Acting Attorney General of the United States brings this action under Section 12(d) of the Voting Rights Act of 1965 [42 U.S.C. §1973j(d)] alleging a violation of Section 5 of the Act [42 U.S.C. §1973c]. Section 5 requires that either the Attorney General or the United States District Court for the District of Columbia approved the enactment of "any voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964." The Attorney General here alleges that the 1972 Georgia House reap-

portionment plan[1] was rejected by the Attorney General under Section 5 within the required 60-day statutory period and asks that this three-judge court, convened pursuant to 28 U.S.C. §2284, enjoin the State from proceeding to hold elections under the current reapportionment plan.

In 1971, the State of Georgia reapportioned its Congressional, State Senate and State House districts and presented its proposed plans to the Attorney General for Section 5 review. The Attorney General requested additional information as to all three plans and such information was furnished by the State. Thereafter, objections were made by the Attorney General as to portions of each of the plans. As a result, new Congressional and Senatorial plans were subsequently adopted by the General Assembly and were approved by the Attorney General. Although the State of Georgia adopted a new House plan in response to the Attorney General's first objection, that plan failed to eliminate the features of the first plan [i.e., multi-member districts, numerical posts and majority runoffs] to which the Attorney General had objected. For that reason, the Attorney General rejected this second House plan and subsequently, filed this action.

The legislative history of the Voting Rights Act does not clearly indicate that Congress intended Section 5 to apply to reapportionment acts. In view of *Allen v. State Board of Elections*, 393 U.S. 544, 22 L.Ed.2d 1, 89 S.Ct. 817 (1969) and *Perkins v. Matthews*, 400 U.S. 379, 27 L.Ed.2d 476, 91 S.Ct. 431 (1971), this Court holds that Section 5 is applicable to such plans. More-

[1]1972 Act No. 877.

over, this reapportionment plan is subject to Section 5 because the plan constitutes a change from prior Georgia procedures in that it redraws district lines and in some instances, replaces single-member districts with multi-member districts. The State's contention to the contrary is not well-founded.

Therefore, under the Voting Rights Act, the sole question before this Court is whether this plan, having been presented to the Attorney General for review, was rejected by him within 60 days. If so, this Court, without determining the merits of the State's proposed plan, must enjoin the State from operating under it.

In looking at the timetable of events in this case, we find that the Attorney General objected to the State's plan within the requisite 60 days. The first House reapportionment plan was submitted to the Attorney General on November 5, 1971. By letter dated November 19, 1971, the Attorney General requested further information from the State to aid in his Section 5 review. At that time, the Attorney General advised the State that the 60-day period for objection would commence running when the additional information was received by the Justice Department. That additional information was received on January 6, 1972 (more than 60 days after the State first submitted its plan), and the United States made its objection to the plan on March 3, 1972. Since the Attorney General's objection of March 3, 1972, was made within 60 days of his receipt of the additional information, we find that there was compliance with the 60-day time limit by the Attorney General. Likewise, the Attorney General's March 24, 1972 objection to the second House reapportionment plan dated March 9, 1972 was within the 60-day period. The Court

will not allow the State to withhold additional information sought by the Attorney General until after the 60-day period has elapsed and thereafter contend that the Attorney General failed to object within the statutory period.

The 1971 and 1972 plans were disapproved by the Acting United States Attorney General. The State cannot revert to its previous apportionment statutes[2] since this Court has already declared that the State is malapportioned thereby and has ordered the State to reapportion.[3]

This Court specifically does not pass on the merits of the Georgia reapportionment plan.[4] We determine, however, that the Attorney General had jurisdiction over the matter and that within the proscription of Section 5, he disapproved Georgia's reapportionment plan. We further find that Section 5 of the Voting Rights Act is constitutional as applied.[5] Therefore, while retaining jurisdiction of this matter, the Court hereby enjoins the State of Georgia from proceeding to hold elections under the present reapportionment plan. The Speaker of the Georgia House of Representatives was present in Court

---

[2]Ga. Laws 1968, p. 209.

[3]*Toombs v. Fortson*, 277 F.Supp. 821 (N.D. Ga. 1967).

[4]An Amicus Curiae Brief has been filed in this case making a 14th Amendment attack on the 4th district. The Acting Attorney General also points out 'Equal Protection' problems as to multi-member districts in general and a separate complaint has been filed making a 14th Amendment attack on the 56th Senatorial District in DeKalb County. The Court has also received correspondence and complaints about other districts and gerrymandering. One of these was from the Ordinary of Paulding County. This Order does not pass on these questions.

[5]Cf. *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769.

and announced that the General Assembly would comply with the Court's Orders. Also, the legal aide to the Governor indicated that a Special Session of the General Assembly would be called immediately.

The Court will reconvene at 2:00 P.M. on May 3, 1972, to review any plan submitted by the State of Georgia or in the alternative to hear argument as to such action as may be required by the Court.

IT IS SO ORDERED this 19 day of April, 1972.

APPENDIX B

STATUTES AND REGULATIONS INVOLVED

I.

Section 4 of the Voting Rights Act of 1965, as amended; pertinent provisions of (42 U.S.C. § 1973b):

(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard

and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this Section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum

of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) Definition of test or device.

The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter. (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

II.

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, pertinent provisions of (Fed. Register, Vol. 36, No. 176, Sept. 10, 1971, pp. 18186-18190):

AUTHORITY: The provision of this Part 51 issued under 5 U.S.C. 301, 28 U.S.C. 509, 510 and section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, as amended, 84 Stat. 315 (1970), Chapter I of Title 28, Code of Federal Regulations.

§ 51.3 Computation of time.

(a) The Attorney General shall have 60 days in

which to interpose an objection to a submitted change affecting voting.

(b) The 60-day period shall commence upon receipt by the Department of Justice of a submission from an appropriate official, which submission satisfies the requirements of § 51.10(a). Procedures for requesting additional material and for determining the commencement of the 60-day period when a submission is inadequate are described in § 51.18.

§ 51.10 Contents of submissions.

(a) Each submission shall include:

(1) A copy of any legislative or administrative enactment or order embodying a change affecting voting, certified by an appropriate officer of the submitting authority to be a true copy.

(2) The date of final adoption of the change affecting voting.

(3) Identification of the authority responsible for the change and the mode of decision (e.g., act of State legislature, ordinance of city council, redistricting by election officials).

(4) An explanation of the difference between the submitted change affecting voting and the existing law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting. When the change will affect less than the whole State or subdivision, such explanation should include a description of which subdivisions or parts thereof will be affected and how each will be affected.

(5) A statement certifying that the change affecting voting has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(6) With respect to redistricting, annexation, and other complex changes, other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change. Such other information may include items listed under paragraph (b) of this section. When such other information is required, the Attorney General shall notify the submitting authority in the manner provided in § 51.18(a).

(b) In addition to the requirements listed in paragraph (a) of this section, each submission may include appropriate supporting materials to assist the Attorney General in his consideration. The Attorney General strongly urges the submitting authority to include the following information insofar as it is available and relevant to the specific change submitted for consideration:

(1) A statement of the reasons for the change affecting voting.

(2) A statement of the anticipated effect of the change affecting voting.

(3) A statement identifying any past or pending litigation concerning the change affecting voting or related prior voting practices.

(4) A copy of any other changes in law or administration relating to the subject matter of the submitted change affecting voting which have been put into effect since the time when coverage under section 4 of the Voting Rights Act began and the reasons for such prior changes. If such changes have already been submitted

the submitting authority may refer to the date of prior submission and identify the previously submitted changes.

(5) Where any change is made that revises the constituency which elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or changes the location of a polling place or place of registration, a map of the area to be affected showing the following:

(i) The existing boundaries of the voting unit or units sought to be changed.

(ii) The boundaries of the voting unit or units sought by the change.

(iii) Any other changes in the voting unit boundaries or in the geographical makeup of the constituency since the time that coverage under section 4 began. If such changes have already been submitted the submitting authority may refer to the date of the prior submission and identify the previously submitted changes.

(iv) Population distribution by race within the existing units.

(v) Population distribution by race within the proposed units.

(vi) Any natural boundaries or geographical features which influenced the selection of boundaries of any unit defined or proposed for the new voting units.

(vii) Location of polling places.

(6) Population information: (i) Population before and after the change, by race, of the area or areas to

be affected by the change. If such information is contained in the publications of the U.S. Bureau of the Census, a statement to that effect may be included.

(ii) Voting-age population and the number of registered voters before and after the change, by race, for the area to be affected by the change. If such information is contained in the publication of the U.S. Bureau of the Census, a statement to that effect may be included.

(iii) Copies of any population estimates, by race, made in connection with adoption of the proposed change, preparation of the submission or in support thereof and the basis for such estimates.

(iv) Where a particular office or particular offices are involved, a history of the number of candidates, by race, who have run for such office in the last two elections and the results of such elections.

(7) Evidence of public notice or opportunity for the public to be heard. In examining submissions, consideration may be given, where appropriate, to evidence of public notice and opportunity for interested parties to participate in the decision to adopt or implement the proposed change and to indications that such participation in fact took place, or to evidence of notice to the public that a submission has been made soliciting comment by the public to the Department of Justice. Examples of materials demonstrating public notice or participation include:

(i) Copies of newspaper articles discussing the proposed change.

(ii) Copies of public notices (and statements re-

garding where they appeared, e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups) which describe the proposed change and invite public comment or participation in hearings, or which announce submission to the Attorney General and invite comments for his consideration.

(iii) Minutes or accounts of public hearings concerning the proposed changes.

(iv) Statements, speeches, and other public communications concerning the proposed changes.

(v) Copies of comments from the general public.

(vi) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(8) Where information requested herein is relevant but not known and not believed to be available, submissions should so state.

(9) Where information furnished reflects an estimation, submissions should identify the individual and state his qualifications to make the estimate.

(10) Submissions should identify in general the source of any information they supply.

(11) When a submitting authority desires the Attorney General to consider any information which has been supplied in connection with an earlier submission, incorporation by reference may be accomplished by stating the date and subject matter of the earlier submission and identifying the relevant information therein.

§ 51.26 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, notations concerning conferences with the submitting authority or any interested individual or group and a copy of any letters from the Attorney General concerning his decision whether to object to a submission. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.12(c) shall not be included in the section 5 file. Investigative reports and internal memoranda shall not be included in the section 5 file.

APPENDIX C

(Filed in Clerk's Office May 17, 1972; Claude L. Goza, Clerk; By: PJE, Deputy Clerk)

NOTICE OF APPEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* V. THE STATE OF GEORGIA; THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA; JIMMY CARTER, Governor; BEN W. FORTSON, JR., Secretary of State and member of the State Election Board; WILLIAM F. BLANKS, M. M. SMITH, MATTHEW PATTON, MELBA WILLIAMS, Members, *Defendants.*	CIVIL ACTION FILE NO. 16373

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the State of Georgia, the General Assembly of the State of Georgia, Governor Jimmy Carter, Secretary of State Ben W. Fortson, Jr., and members of the State Election Board William F. Blanks, M. M. Smith, Matthew Patton, Melba Williams, the defendants in the above styled case, hereby appeal to the Supreme Court of the United States from the order

holding Section 5 of the Voting Rights Act of 1965 to be constitutional and enjoining the State of Georgia from proceeding to hold elections to the House of Representatives under the present reapportionment plan, entered in this action on April 19, 1972.

This appeal is taken pursuant to 28 U.S.C. § 1253.